

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1350

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1350, as amended, Roger Hernández. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct

transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.

This bill would require the commission to adopt and implement a schedule that implements a second phase-in period for expanding direct transactions, as specified, over a reasonable time commencing not later than July 1, 2014. ~~The bill would require the commission to ensure that nonprofit and government customers, as defined, are given priority to acquire electric service through direct transactions and to ensure that not less than 25% of the allowable kilowatthours in any phase-in period are reserved for nonprofit and governmental customers.~~ The bill would establish as a condition precedent to the second phase-in of the expansion of direct transactions that the commission find that other providers supplying electricity through a direct transaction are procuring eligible renewable energy resources sufficient to meet their procurement requirements pursuant to the California Renewables Portfolio Standard Program.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 365.1 of the Public Utilities Code is
- 2 amended to read:
- 3 365.1. (a) Except as expressly authorized by this section, and
- 4 subject to the limitations in subdivisions (b) and (c), the right of

1 retail end-use customers pursuant to this chapter to acquire service
2 from other providers is suspended until the Legislature, by statute,
3 lifts the suspension or otherwise authorizes direct transactions. For
4 purposes of this section, “other provider” means any person,
5 corporation, or other entity that is authorized to provide electric
6 service within the service territory of an electrical corporation
7 pursuant to this chapter, and includes an aggregator, broker, or
8 marketer, as defined in Section 331, and an electric service
9 provider, as defined in Section 218.3. “Other provider” does not
10 include a community choice aggregator, as defined in Section
11 331.1, and the limitations in this section do not apply to the sale
12 of electricity by “other providers” to a community choice
13 aggregator for resale to community choice aggregation electricity
14 consumers pursuant to Section 366.2.

15 (b) (1) The commission shall allow individual retail
16 nonresidential end-use customers to acquire electric service from
17 other providers in each electrical corporation’s distribution service
18 territory, up to a maximum allowable total kilowatthours annual
19 limit.

20 (2) During the first phase-in period for expanding access to
21 direct transactions, the maximum allowable annual limit shall be
22 established by the commission for each electrical corporation at
23 the maximum total kilowatthours supplied by all other providers
24 to distribution customers of that electrical corporation during any
25 sequential 12-month period between April 1, 1998, and October
26 11, 2009. The commission shall adopt and implement the first
27 direct transactions reopening schedule commencing April 11, 2010,
28 and will phase in the allowable amount of increased kilowatthours
29 over a period of not less than three years, and not more than five
30 years, raising the allowable limit of kilowatthours supplied by
31 other providers in each electrical corporation’s distribution service
32 territory from the number of kilowatthours provided by other
33 providers as of October 11, 2009, to the maximum allowable annual
34 limit for that electrical corporation’s distribution service territory.
35 The commission shall review and, if appropriate, modify its
36 currently effective rules governing direct transactions, but that
37 review shall not delay the start of the first phase-in schedule.

38 (3) The commission shall adopt and implement a schedule that
39 implements a second phase-in period for expanding access to direct
40 transactions over a reasonable time, commencing not later than

1 July 1, 2014. During the second phase-in period, the allowable
2 amount of kilowatthours supplied by other providers in each
3 electrical corporation's distribution service territory, in addition
4 to the amounts authorized pursuant to paragraph (2), shall be
5 increased by the following amounts: for Pacific Gas and Electric
6 Company, 3,946 gigawatthours; for Southern California Edison
7 Company, 3,946 gigawatthours; and for San Diego Gas and Electric
8 Company, 462 gigawatt hours. ~~The commission shall ensure that~~
9 ~~nonprofit and government customers are given priority to acquire~~
10 ~~electric service through direct transactions and shall ensure that~~
11 ~~not less than 25 percent of the allowable kilowatthours in any~~
12 ~~phase-in period are reserved for nonprofit and governmental~~
13 ~~customers. Should nonprofit and governmental customers not~~
14 ~~acquire service through direct transactions up to 25 percent, the~~
15 ~~commission shall make direct transactions available to other~~
16 ~~customers up to the limits established by the commission for each~~
17 ~~period. As a condition precedent to the authorization of additional~~
18 ~~direct transactions pursuant to this paragraph, the commission shall~~
19 ~~find that other providers are procuring eligible renewable energy~~
20 ~~resources sufficient to meet their procurement requirements~~
21 ~~pursuant to the renewables portfolio standard established pursuant~~
22 ~~to Article 16 (commencing with Section 399.11). The commission~~
23 ~~may review and, if appropriate, modify its then effective rules~~
24 ~~governing direct transactions, but that review shall not delay the~~
25 ~~start of the second phase-in schedule. For purposes of this~~
26 ~~paragraph, the following terms have the following meanings:~~
27 (A) "Governmental customers" means a city, county, whether
28 general law or chartered, a city and county, special district, school
29 district, political subdivision, or other local public agency, but
30 shall not mean a joint powers authority, the state or any agency or
31 department of the state other than an individual campus of the
32 University of California, the California State University, or a
33 community college.
34 (B) "Nonprofit customer" means any customer that is a nonprofit
35 organization described in Section 501(c)(3) of the Internal Revenue
36 Code (26 U.S.C. Sec. 501(c)(3)), that is exempt from taxation
37 under Section 501(a) of the Internal Revenue Code (26 U.S.C.
38 Sec. 501(a)).

1 (c) Once the commission has authorized additional direct
2 transactions pursuant to subdivision (b), it shall do both of the
3 following:

4 (1) Ensure that other providers are subject to the same
5 requirements that are applicable to the state's three largest electrical
6 corporations under any programs or rules adopted by the
7 commission to implement the resource adequacy provisions of
8 Section 380, the renewables portfolio standard provisions of Article
9 16 (commencing with Section 399.11), and the requirements for
10 the electricity sector adopted by the State Air Resources Board
11 pursuant to the California Global Warming Solutions Act of 2006
12 (Division 25.5 (commencing with Section 38500) of the Health
13 and Safety Code). This requirement applies notwithstanding any
14 prior decision of the commission to the contrary.

15 (2) (A) Ensure that, in the event that the commission authorizes,
16 in the situation of a contract with a third party, or orders, in the
17 situation of utility-owned generation, an electrical corporation to
18 obtain generation resources that the commission determines are
19 needed to meet system or local area reliability needs for the benefit
20 of all customers in the electrical corporation's distribution service
21 territory, the net capacity costs of those generation resources are
22 allocated on a fully nonbypassable basis consistent with departing
23 load provisions as determined by the commission, to all of the
24 following:

25 (i) Bundled service customers of the electrical corporation.

26 (ii) Customers that purchase electricity through a direct
27 transaction with other providers.

28 (iii) Customers of community choice aggregators.

29 (B) If the commission authorizes or orders an electrical
30 corporation to obtain generation resources pursuant to subparagraph
31 (A), the commission shall ensure that those resources meet a system
32 or local reliability need in a manner that benefits all customers of
33 the electrical corporation. The commission shall allocate the costs
34 of those generation resources to ratepayers in a manner that is fair
35 and equitable to all customers, whether they receive electric service
36 from the electrical corporation, a community choice aggregator,
37 or an electric service provider.

38 (C) The resource adequacy benefits of generation resources
39 acquired by an electrical corporation pursuant to subparagraph (A)
40 shall be allocated to all customers who pay their net capacity costs.

1 Net capacity costs shall be determined by subtracting the energy
2 and ancillary services value of the resource from the total costs
3 paid by the electrical corporation pursuant to a contract with a
4 third party or the annual revenue requirement for the resource if
5 the electrical corporation directly owns the resource. An energy
6 auction shall not be required as a condition for applying this
7 allocation, but may be allowed as a means to establish the energy
8 and ancillary services value of the resource for purposes of
9 determining the net costs of capacity to be recovered from
10 customers pursuant to this paragraph, and the allocation of the net
11 capacity costs of contracts with third parties shall be allowed for
12 the terms of those contracts.

13 (D) It is the intent of the Legislature, in enacting this paragraph,
14 to provide additional guidance to the commission with respect to
15 the implementation of subdivision (g) of Section 380, as well as
16 to ensure that the customers to whom the net costs and benefits of
17 capacity are allocated are not required to pay for the cost of
18 electricity they do not consume.

19 (d) (1) If the commission approves a centralized resource
20 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
21 380, upon the implementation of the centralized resource adequacy
22 mechanism the requirements of paragraph (2) of subdivision (c)
23 shall be suspended. If the commission later orders that electrical
24 corporations cease procuring capacity through a centralized
25 resource adequacy mechanism, the requirements of paragraph (2)
26 of subdivision (c) shall again apply.

27 (2) If the use of a centralized resource adequacy mechanism is
28 authorized by the commission and has been implemented as set
29 forth in paragraph (1), the net capacity costs of generation resources
30 that the commission determines are required to meet urgent system
31 or urgent local grid reliability needs, and that the commission
32 authorizes to be procured outside of the Section 380 or Section
33 454.5 processes, shall be recovered according to the provisions of
34 paragraph (2) of subdivision (c).

35 (3) Nothing in this subdivision supplants the resource adequacy
36 requirements of Section 380 or the resource procurement
37 procedures established in Section 454.5.

38 (e) The commission may report to the Legislature on the efficacy
39 of authorizing individual retail end-use residential customers to

1 enter into direct transactions, including appropriate consumer
2 protections.

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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